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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN B. GEST

Appeal 2009-007191
Application 10/720,256
Technology Center 2100

Before ST. JOHN COURTENAY III, CAROLYN D. THOMAS, and
STEPHEN C. SIU, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1-51. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We Affirm.

BACKGROUND

Appellant's invention is directed to:

A method and system are described for exchanging information with a process using a window display port. According to an exemplary embodiment, information related to a first process is presented in a window that is resizable within a presentation space of a monitor. A second process is selected and a display port is opened in a portion of the window. Information related to the second process is presented in the display port. The display port is linked to the window within the presentation space of the monitor. The first and second processes can be associated with respective application programs.

(Spec. 30, Abstract).

Claim 1 is illustrative:

1. A method for exchanging information with a process using a window display port, the method comprising:

presenting information related to a first process in a window that is resizable within a presentation space of a monitor;

selecting a second process;

opening a display port in a portion of the window;

presenting information related to the second process in the display port; and

linking the display port to the window within the presentation space of the monitor while presenting the information related to the second process in the display port,

wherein the first and second processes are separate processes.

The Examiner relies on the following prior art reference as evidence of unpatentability:

Smith US 2003/0117527 A1 June 26, 2003

Appellant appeals the following rejection:

Claims 1-51 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith.

ISSUES

Under § 103, did the Examiner err in finding that Smith would have taught or suggested presenting information related to a second “process” in a display port, within the meaning of representative claim 1?

Under § 103, did the Examiner err in finding that Smith would have taught or suggested associating input focus wherein a process can receive information from the user interface, within the meaning of representative claim 2?

CLAIM GROUPINGS

Appellant argues the following claim groupings separately:

- (1) Independent claims 1, 17, 38, and 45, and associated dependent claims 6-16, 22-37, 40-44, and 47-51, and
- (2) Claims 2-5, 18-21, 39, and 46.

See App. Br. 9-10. Accordingly, we select claims 1 and 2 as representative of groups (1) and (2), respectively. *See* 37 C.F.R. § 41.37(c)(1)(vii).

FINDINGS OF FACT

We adopt the Examiner's factual findings as set forth in the Answer. (Ans. 3, *et seq.*).

ANALYSIS

Representative Claim 1

Appellant presents the following contentions regarding representative claim 1:

In Smith, the picture-in-picture window displays television channels, closed-circuit video, DVD signals, or an audiovisual source signal. Smith does not teach or suggest that the picture-in-picture window presents information related to a process, (e.g., an instance of a computer application executed by a computer).

Therefore, the picture-in-picture window in Smith cannot be considered as corresponding to the presently claimed display port. Smith's patent is not directed to facilitating a user's input of information via a user interface to any of multiple processes (e.g., computer applications). Instead, Smith, at most, facilitates a user's ability to simultaneously view images from an audiovisual source in a picture-in-picture window, with images already

displayed on a TV or computer screen. Accordingly, Smith does not teach or suggest presenting information related to a second “process” in a display port, as recited in claim 1. Smith also fails to disclose “linking” a display port (which presents a second process) to a resizable window (that presents a first process).

(App. Br. 8-9).

Regarding Appellant’s contention that Smith does not teach or suggest that the picture-in-picture (PIP) window presents information related to a process, (e.g., an instance of a computer application executed by a computer), we agree with and adopt the Examiner’s findings, as follows:

As described in the Summary of the Invention (Paragraphs [0008-0009]), Smith discloses a control program that allows a user to interact with the PIP window and the larger displayed image in order to access different programs, view more information about programs, customize different options etc. As shown in (Paragraphs [0010-0011]), in order to carry out the user interaction, cursors are detected to make selections using buttons or other graphical objects in both the PIP window and larger displayed image.

(Ans. 13).

We are in accord with the Examiner’s findings (Ans. 13) because we agree that Smith’s *control program* (that displays a television picture within the disclosed computer monitor embodiment) necessarily (i.e., inherently) executes within the context of a computer process that provides the context for the executing control program. (See Smith, paras. [0008-0009]).

We also observe that Appellant’s representative claim 1 broadly recites “presenting *information* related to the second process in the display port.” (Claim 1, emphasis added). We conclude that nothing within the

plain meaning of the “information” recited in Appellant’s representative claim 1 excludes audiovisual information, such as the television picture PIP window taught by Smith. (*See Smith*, paras. [0008-0009]).

Moreover, Appellant has not established where a definition is set forth in the Specification that provides an artisan with notice of a special or uncommon meaning for the claim term “display port.” Nor has Appellant established in the record a common or plain meaning for the claim term “display port” such as, for example, by providing a dictionary definition. In addition, there is no declaration of record to consider as evidence regarding the metes and bounds of the claimed “display port.” On this record, we find Appellant’s arguments unpersuasive of error regarding the Examiner’s factual findings and ultimate legal conclusion of obviousness.

Appellant additionally asserts that “Smith also fails to disclose ‘linking’ a display port (which presents a second process) to a resizable window (that presents a first process).” (App. Br. 9).

However, we find Appellant has failed to address the thrust of the Examiner’s rejection for representative claim 1:

Smith did not specifically disclose presenting information related to a first process in a window that is resizable within a presentation space of a monitor, however resizable windows are well known and common in the art. It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate a resizable window into the system of Smith in order to minimize, maximize, or adjust the size of the window.

(Ans. 3).

We find the Examiner's determination that resizable windows are well known and common in the art (Ans. 3) is clearly supported by Smith's express teaching of a resizable window (para. [0010]).

Representative Claim 2

Appellant additionally contends that "Smith does not teach or suggest an input focus associating with the picture-in-picture window or the larger screen, and allowing information from the user interface to be received by a 'process' related to the associated picture-in-picture window or larger screen." (App. Br. 9).

However, Appellant has failed to address the Examiner's finding that "[a]s shown in (Paragraphs [0010-0011]), in order to carry out the user interaction, cursors are detected to make selections using buttons or other graphical objects in both the PIP window and larger displayed image." (Ans. 13). On this record, we agree with and adopt the Examiner's findings as further articulated on pages 15 and 16 of the Answer.

Based on our review of the evidence, we are in accord with the Examiner's factual findings and ultimate legal conclusion of obviousness. Moreover, we note that merely alleging that the features of claim 2 are not taught or suggested by Smith (App. Br. 9) is insufficient to persuade us of Examiner error, as mere attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984); and *Ex parte Belinne*, No. 2009-004693, slip op. at 7-8 (BPAI Aug. 10, 2009) (informative), *available at* <http://www.uspto.gov/web/offices/dcom/bpai/its/fd09004693.pdf>.

The record shows that Appellant has not filed a Reply Brief in response to the Examiner's "Response to Argument" statements (Ans. 13-16). Arguments not made are waived. *See 37 C.F.R. § 41.37(c)(1)(vii).*

On this record, we find no error in the Examiner's § 103 rejection of representative claims 1 and 2. Accordingly, we sustain the Examiner's obviousness rejection of representative claims 1 and 2, as well as claims 3-51 which fall therewith. *See 37 C.F.R. § 41.37(c)(1)(vii).*

DECISION

We affirm the Examiner's § 103 rejection for claims 1-51.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See 37 C.F.R. § 1.136(a)(1) (2009).*

ORDER

AFFIRMED

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